



# KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

## ANNUAL REPORT 2008/2009

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Developed by DWC Division of Information and Research  
 Fran Davis, Director  
 Kim McKenzie, Resource Management Analyst II



**Steven L. Beshear**  
Governor

**Daniel Mongiardo**  
Lieutenant Governor

**KENTUCKY LABOR CABINET**  
**Department of Workers' Claims**

657 Chamberlin Avenue  
Frankfort, KY 40601  
Telephone: (502) 564-5550  
[www.labor.ky.gov/workersclaims](http://www.labor.ky.gov/workersclaims)

**J. R. Gray**  
Secretary

**Mark S. Brown**  
Deputy Secretary

**Dwight T. Lovan**  
Commissioner

November 3, 2009

The Honorable Steve L. Beshear  
Governor of Kentucky  
Capitol Building  
700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601

Dear Governor Beshear:

In accordance with KRS 342.230(2) and KRS 342.435, I have the privilege to submit to you the Annual Report of the Department of Workers' Claims for fiscal year 2008-2009. This Annual Report thoroughly details actions taken by this agency to assure prompt delivery of statutory benefits in an efficient manner.

Highlighted in this report are initiatives the Department of Workers' Claims has taken during the fiscal year, implementing the administrative and adjudicative provisions of the Workers' Compensation Act (KRS Chapter 342).

The Department continues to work closely with business and labor, the legal arena and the insurance and health care industries to develop ideas which will enhance the workers' compensation system while delivering high quality service to the constituents of the Commonwealth of Kentucky.

Through its personnel and operating systems, the Department of Workers' Claims stands equipped to continue to refine initiatives introduced in the past while meeting the inevitable challenges of the future. It has been a distinct pleasure to serve, and I thank you for your encouragement and support.

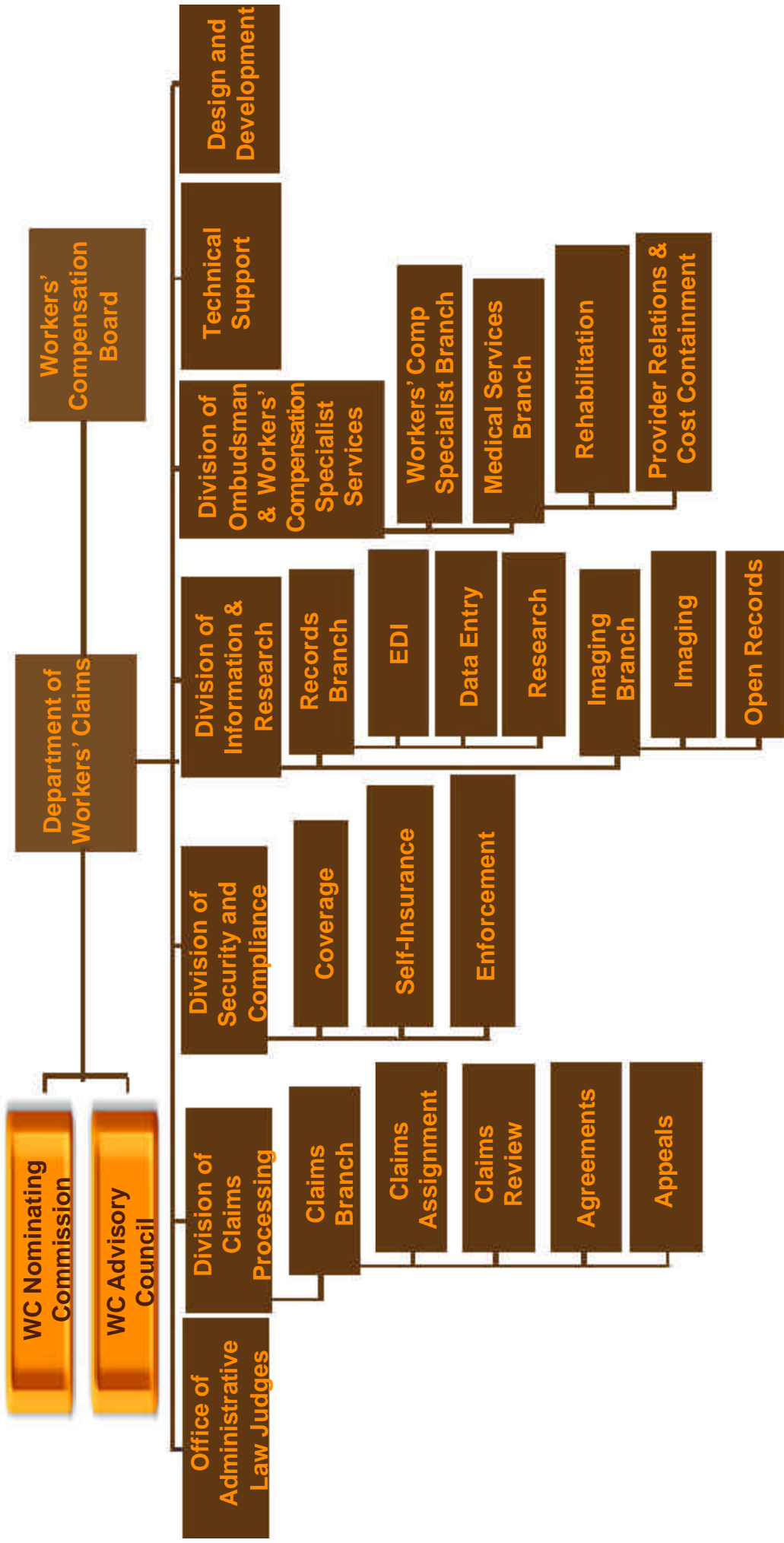
Sincerely,

Dwight T. Lovan, Commissioner  
Department of Workers' Claims



An Equal Opportunity Employer M/F/D

Department of Workers' Claims  
Organizational Structure



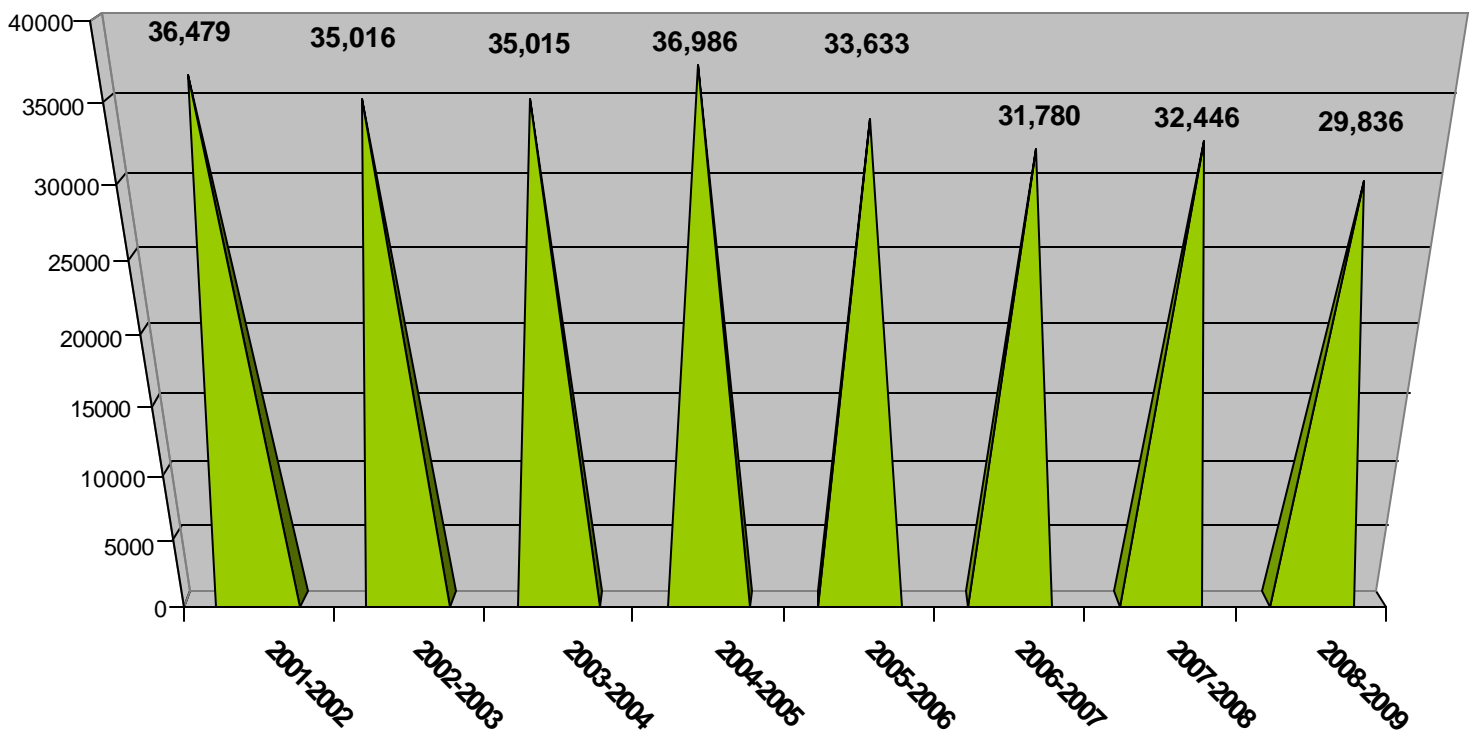
# First Reports of Injury

Kentucky Revised Statute 342.038 mandates that employers keep a record of all employee workplace injuries or fatalities. Upon employee notification, when more than one day of work is lost, the employer has three days to inform its workers' compensation insurance carrier or third party administrator. These entities then have one week after notification of the injury or fatality to file a First Report of Injury with the Department of Workers' Claims. Failure to comply with this reporting requirement may result in penalties pursuant to KRS 342.990.

In fiscal year 2008-2009, there were 29,836 lost time First Reports of Injury filed with the Department of Workers' Claims. This is the lowest number the Department has had in the past seven years. Of these first reports, 39 percent were filed timely and 34 percent were subject to penalties.

The three most common causes of work-related injuries reported in fiscal year 2008-2009 were falls or slips (6,015), lifting (3,856) and strains (2,849).

## First Reports of Injury by Fiscal Year



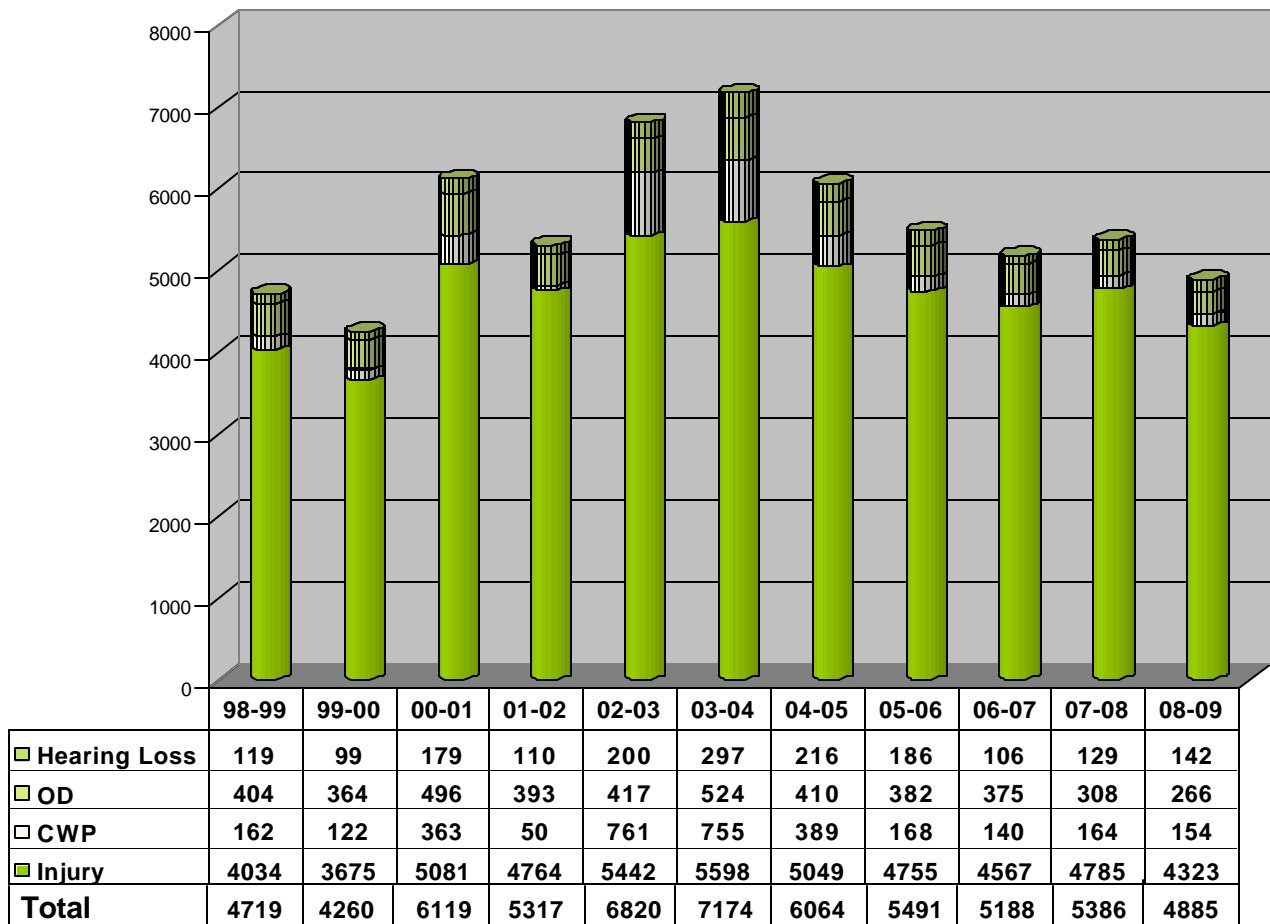
## Workers' Compensation Claims

A workers' compensation claim in Kentucky originates when one of two things happens: A settlement document is filed to voluntarily resolve workers' compensation issues between parties or a claim application is filed because the parties are not in agreement and the matter must be resolved by an Administrative Law Judge.

Workers' compensation claims are typically divided into two types: indemnity and medical-only. Indemnity claims are those for which income benefits are paid to compensate for lost wages, functional impairment or death. Medical service costs are paid in addition to income payments.

Most of the data in this report pertains to indemnity claims. For an injury to be compensable, it must be a direct result of the employee's work. To be considered for temporary total income benefits, an injured worker must miss more than seven days of work. Medical-only claims are those where medical services are delivered but the employee does not qualify for income benefits.

In fiscal year 2008-2009, there were 4,885 applications for resolution of claims filed with the Department of Workers' Claims. This is the lowest amount of applications since FY 1999-2000.





## Comparison by County Labor Force, Lost Time First Reports of Injury (FROIs) and Litigated Claims FY 08-09

County	Total Labor Force	FROIs	% of FROIs to Labor Force	Claims	% of Claims to FROIs
Adair	9,154	67	0.73%	6	8.96%
Allen	8,772	57	0.65%	11	19.30%
Anderson	11,015	75	0.68%	4	5.33%
Ballard	4,234	29	0.68%	4	13.79%
Barren	19,942	223	1.12%	29	13.00%
Bath	5,253	56	1.07%	8	14.29%
Bell	9,536	163	1.71%	42	25.77%
Boone	62,623	898	1.43%	101	11.25%
Bourbon	9,764	212	2.17%	21	9.91%
Boyd	23,162	444	1.92%	70	15.77%
Boyle	12,873	232	1.80%	37	15.95%
Bracken	4,367	23	0.53%	1	4.35%
Breathitt	5,638	60	1.06%	22	36.67%
Breckinridge	9,414	79	0.84%	3	3.80%
Bullitt	39,692	275	0.69%	31	11.27%
Butler	5,672	36	0.63%	5	13.89%
Caldwell	6,771	65	0.96%	9	13.85%
Calloway	17,893	172	0.96%	23	13.37%
Campbell	45,124	298	0.66%	29	9.73%
Carlisle	2,252	20	0.89%	4	20.00%
Carroll	5,747	93	1.62%	12	12.90%
Carter	13,657	97	0.71%	15	15.46%
Casey	7,269	61	0.84%	5	8.20%
Christian	29,475	431	1.46%	48	11.14%
Clark	17,527	286	1.63%	48	16.78%
Clay	6,916	82	1.19%	35	42.68%
Clinton	4,768	53	1.11%	6	11.32%
Crittenden	4,094	41	1.00%	10	24.39%
Cumberland	2,962	24	0.81%	2	8.33%
Daviess	48,426	619	1.28%	61	9.85%
Edmonson	5,465	20	0.37%	5	25.00%
Elliott	3,193	10	0.31%	2	20.00%
Estill	6,234	44	0.71%	8	18.18%
Fayette	151,456	2,669	1.76%	353	13.23%
Fleming	6,634	53	0.80%	6	11.32%
Floyd	15,355	440	2.87%	142	32.27%
Franklin	24,829	824	3.32%	79	9.59%
Fulton	2,691	37	1.37%	7	18.92%
Gallatin	4,012	35	0.87%	10	28.57%
Garrard	7,770	37	0.48%	3	8.11%
Grant	12,973	111	0.86%	16	14.41%
Graves	16,004	146	0.91%	20	13.70%
Grayson	11,380	113	0.99%	12	10.62%
Green	5,658	23	0.41%	3	13.04%
Greenup	17,818	130	0.73%	21	16.15%
Hancock	4,332	74	1.71%	17	22.97%
Hardin	48,321	464	0.96%	47	10.13%
Harlan	9,995	250	2.50%	90	36.00%

# Program Statistics

## Comparison by County Labor Force, Lost Time First Reports of Injury (FROIs) and Litigated Claims FY 08-09

County	Total Labor Force	FROIs	% of FROIs to Labor Force	Claims	% of Claims to FROIs
Perry	11,228	373	3.32%	124	33.24%
Pike	26,084	728	2.79%	358	49.18%
Powell	5,639	59	1.05%	9	15.25%
Pulaski	27,763	485	1.75%	93	19.18%
Robertson	995	2	0.20%	2	100.00%
Rockcastle	7,449	82	1.10%	7	8.54%
Rowan	12,577	116	0.92%	16	13.79%
Russell	8,556	83	0.97%	15	18.07%
Scott	22,658	582	2.57%	86	14.78%
Shelby	21,543	233	1.08%	33	14.16%
Simpson	9,706	152	1.57%	19	12.50%
Spencer	9,081	35	0.39%	4	11.43%
Taylor	14,052	150	1.07%	18	12.00%
Todd	5,354	46	0.86%	3	6.52%
Trigg	6,460	62	0.96%	12	19.35%
Trimble	4,434	32	0.72%	3	9.38%
Union	7,881	148	1.88%	15	10.14%
Warren	58,500	735	1.26%	95	12.93%
Washington	5,609	68	1.21%	8	11.76%
Wayne	8,785	84	0.96%	14	16.67%
Webster	6,543	104	1.59%	12	11.54%
Whitley	15,515	357	2.30%	64	17.93%
Wolfe	2,321	34	1.46%	4	11.76%
Woodford	13,321	307	2.30%	41	13.36%
Out-of-State		1,138		199	
Unknown		121		32	
Grand Total	2,062,635	29836	1.45%	4885	16.37%

# Program Statistics

Workforce data provided by the Department of Workforce Investment.  
 Agriculture is included in the total labor force numbers.  
 Unknown numbers are due to insufficient reporting information.



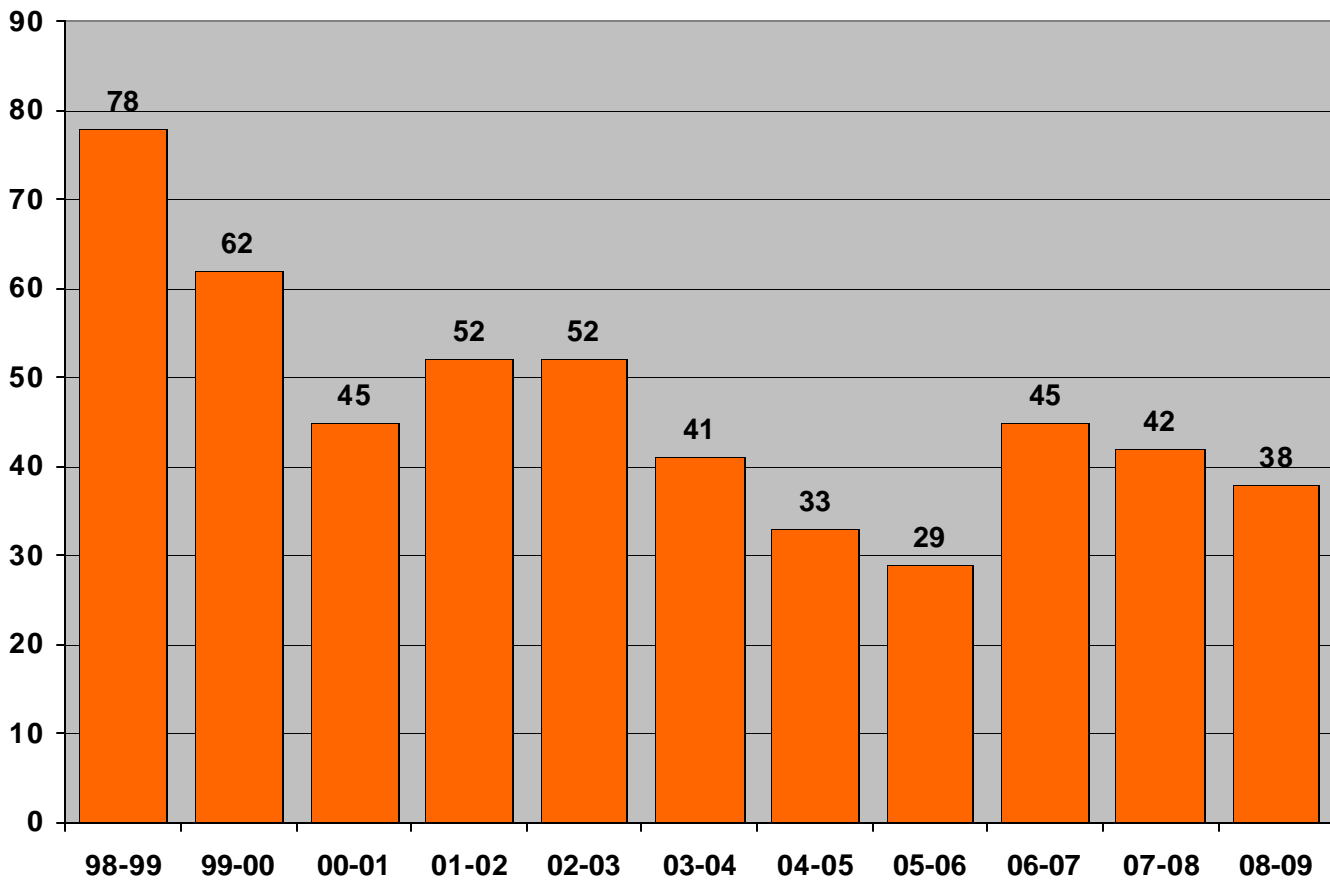
# Work-Related Fatalities

There were 98 reports of workplace fatalities reported to the Department of Workers' Claims during this fiscal year. However, after investigation, only 38 of the deaths were determined to be work-related. The remaining have been ruled as not work-related (26), falling outside the reporting period (23) or containing issues which have the case in a pending status (11).

The youngest of the casualties was an 18-year-old male who suffered a head injury after a fall from a ladder. An 80-year-old male was the oldest worker who died from a heart attack. The most common causes of death this fiscal year were motor vehicles (19) and falling objects (6).

The fatalities reported to DWC occurred in a variety of industries ranging from local trucking, saw mills, scrap and waste workers, concrete work, carpentering to horses and other equine services, highway and street construction and lawn and garden.

## Distribution of Work-Related Fatalities



# DWC PERSONNEL AD BUDGET HISTORY

## FY 1992-93 through FY 2008-09

FISCAL YEAR	PERSONNEL CAP	PERSONNEL ACTUAL	BUDGET ALLOTMENT (\$)	ACTUAL EXPENDITURES (\$)	DIFFERENCE (\$)	PERCENT OF BUDGET EXPENDED
2008-2009	179	167	14,170,100	13,373,435	(796,665)	94.4%
2007-2008	184	160	11,455,000	10,794,005	(660,995)	94.2%
2006-2007	184	167	10,211,700	9,840,070	(371,630)	96.4%
2005-2006	173	156	11,093,300	10,634,776	(458,524)	95.9%
2004-2005	173	163	9,498,700	9,182,865	(315,834)	96.7%
2003-2004	195	188	13,649,200	10,735,937	(2,913,263)	78.7%
2002-2003	242	201	16,397,700	13,384,935	(3,012,765)	81.6%
2001-2002	242	204	15,806,800	13,373,836	(2,432,963)	84.6%
2000-2001	242	208	14,942,300	12,716,927	(2,258,373)	85.1%
1999-2000	268	207	15,637,000	12,387,288	(3,249,712)	79.2%
1998-1999	268	208	14,994,000	12,606,188	(2,387,812)	84.1%
1997-1998	272	227	15,182,500	12,588,527	(2,593,973)	82.9%
1996-1997	272	229	12,137,900	11,057,391	(1,080,509)	91.0%
1995-1996	207	138	9,822,200	9,479,970	(342,230)	96.5%
1994-1995	210	120	9,757,200	8,586,716	(1,170,484)	88.0%
1993-1994	167	159	7,860,000	7,337,688	(522,312)	93.4%
1992-1993	167	160	7,505,100	7,004,561	(500,539)	93.0%

Pursuant to Executive Order #2009-0537, filed on June 12, 2009, the Office of General Counsel for Workers' Claims was established within the Department of Workers' Claims. As a result, the agency position allotment was increased by five positions from 174 to 179.

## Office of Administrative Services

The Office of Administrative Services responsibilities include ensuring all financial transactions and personnel actions comply with applicable laws and regulations, are executed in a timely manner, and are properly documented and allocated to the appropriate program budget unit. Some of the functions Administrative Services perform include: managing and executing the annual budget and all contracts and leases; responding to all requests for publications and forms; processing all incoming and outgoing mail; procuring supplies and equipment;



maintaining infrastructure for 15 agency locations; coordinating DWC training; and providing daily assistance to all divisions of the Department of Workers' Claims.

The following publications are made available by the DWC:

Medical Fee Schedule for Physicians  
Commissioner's Report on "B" Readers  
Workers' Compensation Posting Notice  
Life Expectancy Tables  
Rehabilitation Pamphlet  
Compliance Inspection Pamphlet  
List of "B" Readers for CWP  
Acute Low Back Pain Booklet

Workers' Compensation Forms  
Hospital Fee Schedule  
Annual Report  
Benefits Schedule  
Quarterly Report  
Present Worth Table  
Workers' Compensation Guidebook

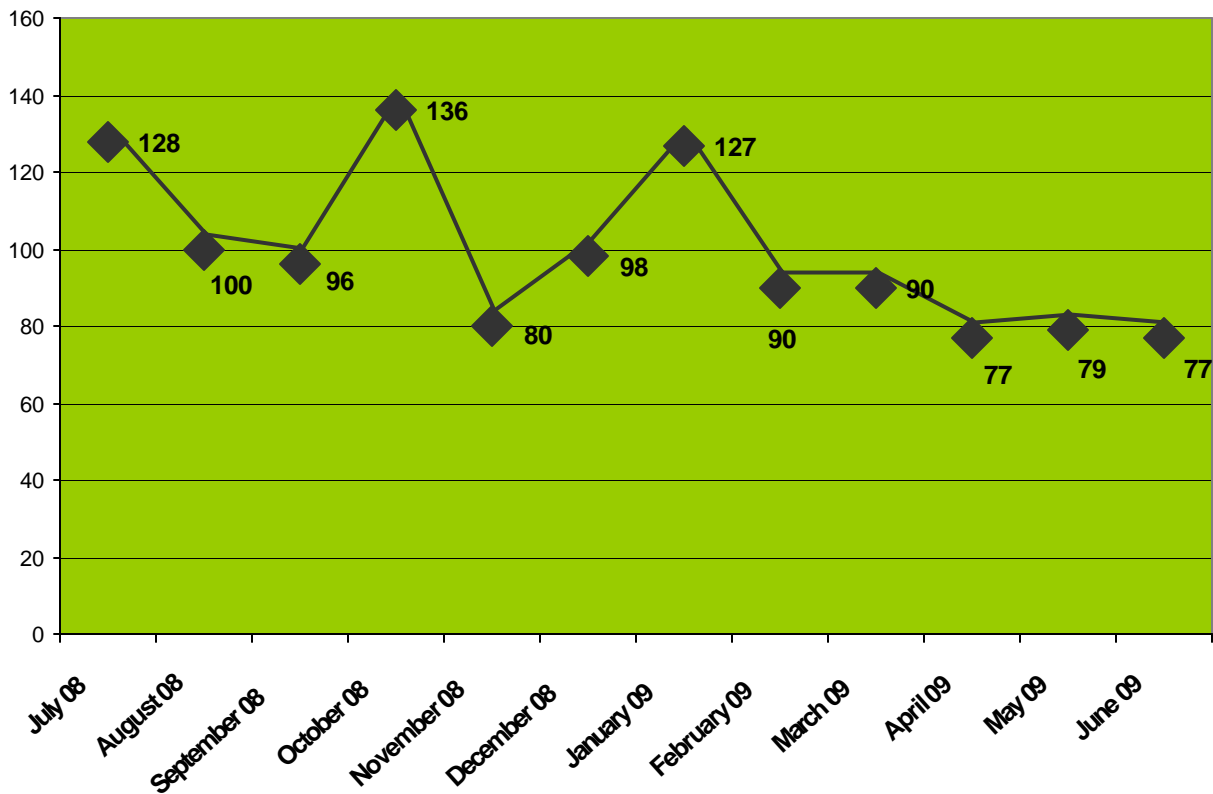
The following page contains forms that may be requested through Administrative Services or by accessing the Department of Workers' Claims web site at <http://www.labor.ky.gov/workersclaims>. The only exception to this is the Form 4 which can only be obtained by contacting Administrative Services.

## Technical Support Distribution of Requests FY 2008-2009

The Technical Support Section consists of four IT staff members and is responsible for the network infrastructure and all computer-related equipment and services for the Department of Workers' Claims. Technical Support staff administers and maintains an Active Directory environment, NT resource domain and three Voice Over Internet Protocol (VOIP) phone systems. The staff researches, configures and upgrades all networks, servers, desktops, laptops, printers and user hardware and software. The staff oversees audio/visual needs of the agency through planning, setup and training on A/V equipment. Staff ensures computer surplus equipment is sanitized to State Auditor's standards. All wireless Blackberry and AT&T data devices are configured and maintained through the Technical Support Section. VMWare virtual server implementation is an ongoing process to consolidate server operations, hardware cost reduction and to aid in disaster recovery.

During this past fiscal year, the Technical Support Section responded to 1178 helpdesk calls and 3400 issues or requests for assistance; managed the networking of two additional field offices; upgraded 56 staff computers; and researched the following: VOIP system upgrade, virtual SAN, A/V conference room configuration and backup power management.

### Helpdesk Totals FY 08-09



## Design and Development Section

The Design and Development Section responds to all development and programming needs for the Department of Workers' Claims. The staff works to enhance the agency's *Server-based System for Information Management and Business Application* (SIMBA), *Electronic Data Interchange* (EDI), and *Proof of Coverage* (POC) programs to meet the evolving needs of the agency and stakeholders. The staff applies new features to SIMBA, EDI, POC, Reports, and Rehab that assists user's day-to-day functions. During this fiscal year, a new policy driven system and POC importer was implemented in SIMBA, which made proof of coverage more automated.



Design and Development staff created the 120EX process for Chiropractic Peer Review. In response to House Bill 534, Insurance Coverage Drop Letters were created and installed. This letter is to notify insureds when there is no coverage on file. The staff designed and published an Online Coverage Lookup Tool on the Department of Workers' Claims web site. The Design and Development staff installed 12 SIMBA builds, 16 SIMBA patches, five EDI builds, seven POC builds, two Rehab builds, and one Report build. During this period, the staff also updated the 992 Table with 2009 Worker's Compensation Benefit

Schedule and Present Worth Table present value discounted at 3.50%. The docket program was rewritten in ASP.NET. In addition, the CompLaw program was monitored and updated monthly. The Design and Development staff completed 710 test track issues and received 685 new test track issues for the year. The staff made modifications to letterhead and envelope templates and SIMBA and EDI form letters were modified.

In addition, the staff created and implemented new status codes, filenet codes and form letters. They also worked on a budget baseline narrative for 2009-2010. Design and Development staff conducted SIMBA training for users, created a Proof of Coverage Implementation Guide that outlines the new POC 2.1 program requirements in line with *International Association of Industrial Accident Boards and Commissions* (IAIABC) Standards 2.1 and made modifications to programs and applications due to personnel changes. The KY EDI Newsletter– June 2009 Vol. 2 edition was e-mailed through the Communications Network to POC/EDI vendors and other parties notifying them of any changes. This fiscal year, Design and Development staff attended six training/conferences.



## Administrative Law Judges

The Department of Workers' Claims has 19 Administrative Law Judge (ALJ) positions allocated, 16 of which are currently filled. Each ALJ is appointed by the Governor for a four-year term from a list of three names submitted by the Workers' Compensation Nominating Commission. Each ALJ is subject to confirmation by the Kentucky State Senate. One of the ALJs is designated Chief Administrative Law Judge pursuant to KRS 342.230(8).

### Chief Administrative Law Judge

The Chief Administrative Law Judge is assigned to the Frankfort, Kentucky office. The CALJ presides over the Frankfort motion docket. In addition, the CALJ rules on settlement agreements in unassigned cases and regularly conducts dockets for coal workers' pneumoconiosis (CWP) cases, as well as conducts hearings in various enforcement actions. The CALJ supervises ALJ activities, prepares a rotation schedule for the ALJs, plans two adjudicator training sessions annually, takes initial assignment of all CWP claims and covers dockets for other ALJs on an emergency basis.



Honorable Donna H. Terry  
B.A., 1970, University of Kentucky  
J.D., 1972, University of Kentucky College of Law  
Appointment date: April 15, 1988  
Chief ALJ 1994-1998  
Chief ALJ June 23, 2008 - December 31, 2008



J. Landon Overfield  
B. A., Political Science, 1970,  
University of Kentucky  
J.D., 1972, University of Kentucky  
College of Law  
Initial appointment date: November 15, 1994  
Chief ALJ January 1, 2009 - June 30, 2009



# Administrative Law Judges



Howard Fraiser  
B. A., 1984, David Lipscomb College  
J.D., 1987, University of Kentucky  
College of Law  
Initial appointment date: February 12, 2004



Douglas W. Gott  
B.A., 1987, Western Kentucky University  
J.D., 1991, University of Kentucky  
College of Law  
Initial appointment date: June 23, 2008



Edward D. Hays  
B.A., 1970, University of Kentucky  
J.D., 1973 University of Kentucky  
College of Law  
Initial appointment date: August 1, 2008



Richard Joiner  
B.A., Economics, 1972,  
University of Michigan  
J.D., 1975, University of Kentucky  
College of Law  
Initial appointment date: September 18, 2001

# Administrative Law Judges



Irene Steen  
B.S., Medical Technology, 1972,  
University of Kentucky,  
J.D., 1975, University of Kentucky  
College of Law  
Initial appointment date: May 1990



Otto Daniel Wolff IV  
B.A., 1970, University of Cincinnati  
J.D. 1974, University of Cincinnati  
Initial appointment date: July 15, 2008

## Summary of FY 2008-2009 Published Kentucky Supreme Court Workers' Compensation Cases

### **Kentucky Container Services, Inc. v. Ashbrook, 265 S.W.3d 793 (Ky. 2008)**

#### **Subject: KRS 342.040(1) Statute of Limitations/Notice**

The employer's carrier filed a Form IA-2 that did not contain the proper maintenance code to inform the Department of Workers' Claims TTD had been terminated this deprived the Department of the information necessary to comply with its obligation to generate a letter to inform the claimant of the statute of limitations. The claimant did nothing to impede the employer's ability to comply, and the record revealed no evidence of other extraordinary circumstances that would require a decision in the employer's favor. The carrier's failure to comply strictly with the statute and regulation precluded a limitations defense.

### **Pendygraft v. Ford Motor Co., 260 S.W.3d 788 (Ky. 2008)**

#### **Subject: Average Weekly Wage**

Profit-sharing bonuses received under a union contract are not "money payments for services rendered" within the meaning of KRS 342.140(6) and are not included in the average weekly wage calculation.

### **St. Joseph Hospital v. Littleton-Goodan, 260 S.W.3d 826 (Ky. 2008)**

#### **Subject: Reopening/Evidence**

The requirement set forth in 803 KAR 25:010 that parties designate evidence from the original record relevant to a reopening does not prevent the ALJ from considering any relevant part of the record not designated by a party.

### **Sweeney v. Kings' Daughters Medical Center, 260 S.W.3d 829 (Ky. 2008)**

#### **Subject: Evidence**

Chapter 342 and the regulations are silent regarding the weight to be afforded a treating physician's testimony. The legislature's silence evinces a legislative intent to give no particular weight to that testimony.

### **Durham v. Peabody Coal Co., 272 S.W.3d 192 (Ky. 2008)**

#### **Subject: Pneumoconiosis**

The consensus procedure mandated by KRS 342.316 for claims based solely on category 1 pneumoconiosis does not violate the 14<sup>th</sup> Amendment of the United States Constitution or sections 1, 2 and 3 of the Kentucky Constitution.

### **Hall v. Hospital Resources, Inc., 276 S.W.3d 775 (Ky. 2008)**

#### **Subject: Reopening**

The four-year period of limitations in KRS 342.125(3) runs from the date of the latest order granting or denying benefits. The Court interpreted the phrase "original award or order granting or denying benefits" as referring to the original award or to a subsequent order that grants or denies benefits.

# **Summary of FY 2008-2009 Published Kentucky Supreme Court Workers' Compensation Cases**

**Cain v. Lodestar Energy, Inc., S.W.3d (Ky. 2009) WL 735837**

**Subject: Pneumoconiosis**

KRS 342.316(3)(b)4.e. requiring submission to the consensus process discriminates against workers whose employers submit evidence of category 1 disease and effectively concede their eligibility for a RIB award and does so solely because the parties' evidence is not in consensus.

**Chrysalis House v. Tackett, 283 S.W.3d 671 (Ky. 2009)**

**Subject: KRS 342.730(1)(c) Multipliers**

When read in context, KRS 342.730(1)(c)2 permits a double income benefit during any period that employment at the same or greater wage ceases "for any reason with or without cause", provided the reason relates to the disabling injury.

**Tokico (USA), Inc. v. Kelly, 281 S.W.3d 771 (Ky. 2009)**

**Subject: AMA Guides**

Diagnostic criteria listed in the Guides have relevance when judging the credibility of a diagnosis, but Chapter 342 does not require a diagnosis to conform to criteria listed in the Guides.

**Crawford & Co. v. Wright, 284 S.W.3d 136 (Ky. 2009)**

An ALJ may not relieve an employer from liability for future medical expenses based upon a failure to respond to the motion to reopen to contest them.

**Kentucky Employers Safety Ass'n. v. Lexington Diagnostic Center, S.W.3d (Ky. 2009) WL 1441573**

**Subject: Traumatic Event**

A blood splatter in the eye is a traumatic event for purposes of KRS 342.0011(1) entitling the claimant to reasonable and necessary medical expenses.

**Vacuum Depositing Inc. v. Dever, 285 S.W.3d 730 (Ky. 2009)**

**Subject: Idiopathic/Unexplained Fall**

Claimant's testimony that she was clumsy and wearing 2 inch heels was not substantial evidence to rebut the presumption in Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898 (Ky. 1977) that her fall was work related.

**Speedway/Super America v. Elias, 285 S.W.3d 722 (Ky. 2009)**

**Subject: Medical Expenses/Spousal Compensation**

Forms 114 submitted by a claimant's spouse in connection with the claim for home health care services provided by spouse were "fully completed" within the spirit of the governing regulation although the initial Form 114 provided little detail about the claim. An accompanying letter from the claimant's attorney listed types of services the spouse provided and explained the basis for the amount sought for each time period and the form covered. The employer clearly knew the seriousness of the claimant's injuries, had access to all of his medical records and had paid significant medical expenses including professional home nursing services for more than two years.

# Claims Processing & Appeals

The Division of Claims Processing and Appeals wishes to take the mystery out of the claims process and to continually improve our services. In an effort toward these goals, we have updated the Web site, <http://www.labor.ky.gov/workersclaims/claimsprocessing/>, to illustrate a directory of our division when our constituents need assistance; to provide an overview of each section denoting their specific duties; to summarize the most frequently asked questions; and to make available the necessary forms for filing.

When it becomes necessary to file a workers' compensation claim, the **Division of Claims Processing and Appeals** is not only the beginning point for these claims, but also for the many transactions that must occur on the claim's path to resolution, as well as the resting place of the closed file. The Division consists of four sections: **Agreement Section**,

**Claims Review Section**, **Claims Assignment Section** and **Appeals Section**. Each

of these areas of expertise has submitted the following data for the fiscal year 2008-2009 accompanied by a brief narrative of each section's duties and obligations.

The **Agreement Section** receives and processes all pre-litigation agreements, lump sum settlements and motions to substitute party for widow's benefits. Motions and agreements are prepared on a daily basis for submission to the Frankfort agreement docket for rulings to be made by the Chief Administrative Law Judge (CALJ). Section staff received and processed 4,409 first report agreements; 744 unassigned claim/reopening agreements (medicals and lump sums of remaining benefits); and 174 motions to substitute party/ widow's benefits for the 2008-2009 fiscal year.





# Information and Research

The duties of the Division of Information and Research include collection, storage and retrieval of data and the dissemination of information. The Division of Information and Research is organized into two branches, the Records Branch and the Imaging Branch. The Records Branch is primarily responsible for data entry, Electronic Data Interchange (EDI), coding, publications, specific data extrapolation associated with open records requests and ensuring the validity and integrity of the DWC's databases. The duties of the Imaging Branch consist of imaging and verifying all hard copy documents as well as indexing them into the DWC's integrated information and optical image system. The Imaging Branch also responds to requests for claim and first report information as well as open records requests.





**The Research Section** collects, reviews and compares information pertinent to workers' compensation and the Kentucky Department of Workers' Claims. Specialized queries are developed to extract data from the Department's database system. Research staff is familiar with the tables contained within the database. Detailed coding, current and historical, is used to identify each document utilized through the claims process, thus allowing specialized reports to be generated for analysis within the section.

The Department of Workers' Claims Annual Report, the Link (Quarterly Activity Report) and the Workers' Compensation Guidebook are a few examples of the publications designed and developed by the Research staff. All of the current publications are being printed and bound in-house on an as-needed basis due to budget constraints. The agency publications are essential in providing constituents and the general public with the knowledge necessary to understand and utilize the workers' compensation system.

Statistical information is requested from a multitude of sources such as government entities, health care representatives, attorneys, the media, legislators and/or private individuals. Data gathered by the research staff is used for assisting in filing a claim, preparation of safety/training programs and updating state and national data banks. Information sharing agreements are in place with a variety of state agencies, i.e. Medicaid, Revenue, Retirement and the Office of Insurance.

The Research Section maintains and manages the agency web site. Staff also serves as a webmaster for inquiries from the web site and provide the requestor with information and/or answers to their questions or forward them on to appropriate personnel for response. Section staff also creates PowerPoint presentations for the DWC for conferences, speeches, etc.

The Research Section continues to focus on insurance carrier performance. Reports are generated on timely filing of first reports, initial payment of benefits and termination of benefits. Through analysis of information submitted electronically through the agency's Electronic Data Interchange (EDI) system by the insurance carrier, section staff was able to process reports for 14 different insurance carriers this fiscal year.



## The Imaging Branch

The Imaging Branch is now comprised of two sections: Scanning and Open Records. The Scanning Section is responsible for scanning and verifying all hard-copy documents and indexing them into the agency's integrated imaging system. This fiscal year, 200,783 documents equaling 1,433,225 pages were scanned. Micrographics equipment is located within the branch offices and is available for use by agency staff as well as the general public. The number of microfilm pages printed from these machines during this time period totaled 206,410 pages. Other responsibilities of this branch include document retention and destruction. All documents are maintained in accordance with the Department for Library and Archives retention schedule.

The Open Records staff are charged with the responsibility of responding to requests for claim and first report information pursuant to KRS 61.872(2). Requests for prior claim history are received from a variety of outside parties, including attorneys, insurance carriers, employers, the Social Security Administration and the general public.



During the 2008-2009 fiscal year, 12,701 written requests, three walk-in requests and 9,313 requests from the Social Security Administration were received. In addition to producing hard copy records, oral testimony and certifications are also provided by this section upon request. Available to prospective employers through the Open Records Section is a service of pre-employment screening. Pre-employment requests are only granted after the Department of Workers' Claims has received a written request, accompanied by a signed employee authorization form. Pre-employment inquiries totaled 16,327,

coming in as the most frequently requested material. The amount of money received by the Open Records Section this fiscal year was \$113,572.50.

Pursuant to KRS 150.170, the Open Records Section also verifies workers' compensation awards for the Department of Fish and Wildlife for individuals applying for free hunting and fishing licenses. This reporting period, there were 40 applications processed.

## **Self-Insurance Branch**

**Individual Self-Insurers** –At the end of the fiscal year, there were 150 individual self-insured companies, six of which were on the self-insurance watch list.

Two current and four former self-insured companies declared bankruptcy during the year.

The actuarial model used to establish surety amounts for the self-insured employers was reviewed and updates were made to the development factors and to a portion of the program logic. The model was also modified to allow auditors to enter factors that address financial strength of a self-insured and a factor that reflects the degree of hazard employees of a self-insured employer face. The actuarial model will be reviewed each year to ensure the accuracy of the factors being utilized.

There were 179 surety requirement audits and 45 reserve audits conducted during this fiscal year. To date, 320 reserve audits have been conducted. The DWC continues to review the practices of the self-insured companies to assure that adequate reserves are being reported. In addition, reviews have been performed to assist the DWC in determining when a surety reduction requested by a former self-insured is or is not warranted.

## **Coverage Branch**

The Coverage Branch receives information through the Electronic Data Interchange (EDI) documenting proof of workers' compensation coverage from each carrier and self-insured group fund, for employers covered by the Workers' Compensation Act.

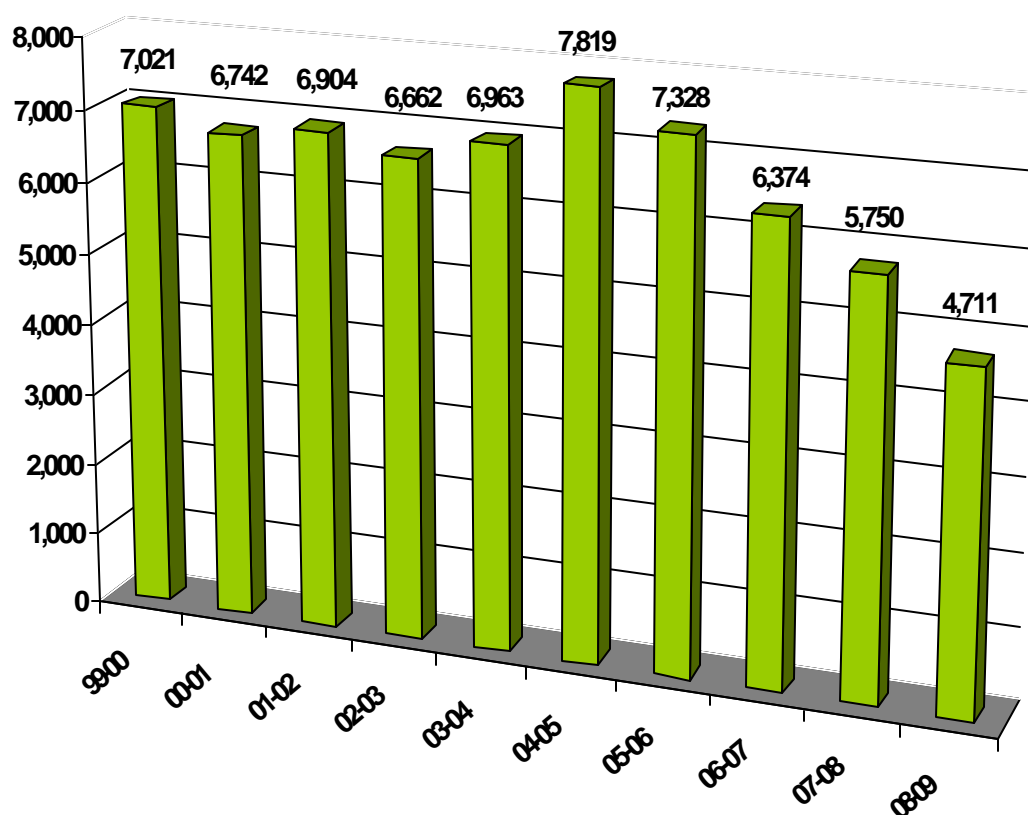
An estimated 306 insurance companies, including the competitive state fund Kentucky Employers Mutual Insurance Company (KEMI), insured the Commonwealth's employers during this fiscal year. Carriers submit required Proof of Coverage information through one of the state-approved data collection agents. There are three data reporters approved to submit proof of coverage: Workers' Comp-Link, Claimport (ISO) and National Council on Compensation Insurance (NCCI). Kentucky Employers Safety Association (KESA) and Kentucky Association of General Contractors (KAGC) are approved for direct filing of Proof of Coverage to the Department.

Data is received by a master database maintained by the Coverage Branch. There were 751,101 POC transactions received from carriers during the fiscal year. Of the 751,101 transactions received: 67% or 502,902 were Auto Processed, an increase of 83% over last year; 16% or 122,060 were Rejected, an increase of 80% over last year; and 13% or 100,383 were Manually Processed, a decrease of 51% over last year. These numbers reflect the change to a policy driven database in September 2008, along with the submittal of historical files to build up the database information.

Certifications of coverage, monitoring of "Wrap-up" construction projects, registration of employee leasing organizations, and other special projects complete the responsibilities that are part of normal day-to-day operations.

The Branch also has the responsibility to maintain the filing of Employee's Written Notice of Rejection of the Workers' Compensation Act (Form 4). An employee may waive the right to protection under the Act by filing this notarized form with the Department of Workers' Claims. In FY 2009, the Branch received and filed 4,711 Form 4s. The chart below shows the number of employees rejecting coverage for the past 10 fiscal years. Employees rejecting coverage remained relatively constant from 2000 through 2005. Those rejecting coverage consistently declined over the past four fiscal years.

**Employee's Written Notice of Rejection  
filed with the Department of Workers' Claims by Fiscal Year**

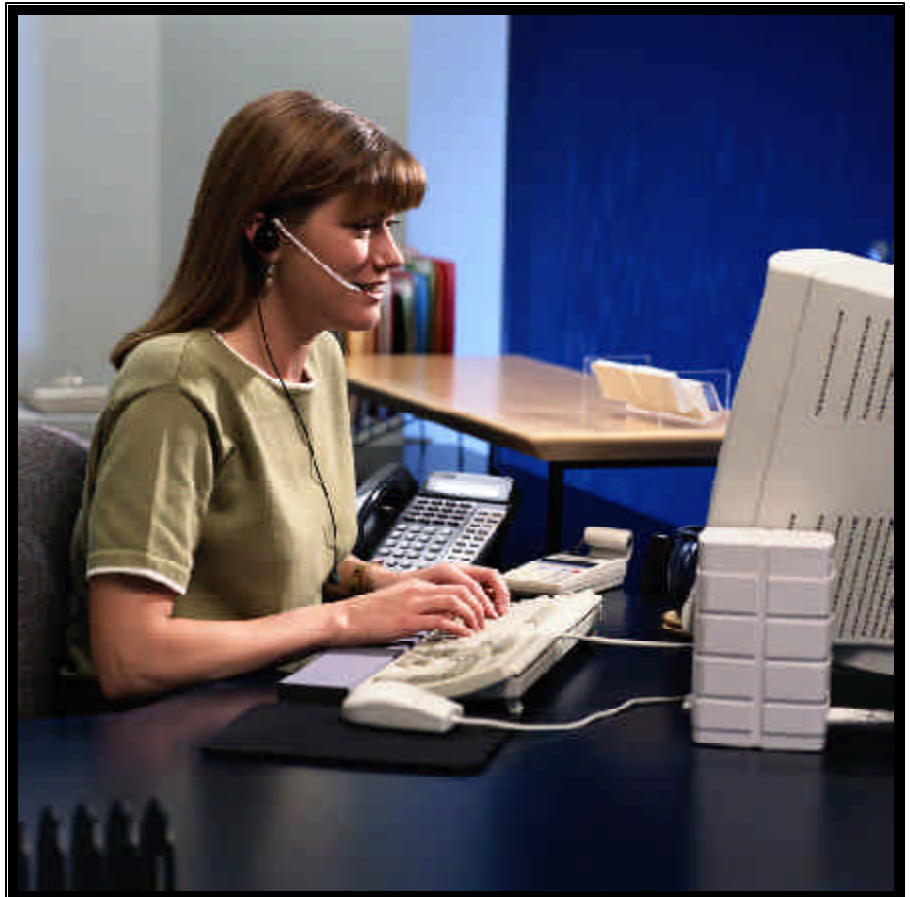


## **Ombudsman and Workers' Compensation Specialist Branch**

Established in 1994, the Ombudsman and Workers' Compensation Specialist Branch is now in its fifteenth year of operation. The Branch currently employs eight workers' compensation specialists throughout the state – five in Frankfort and the remaining three in branch offices in Louisville and Pikeville.

Toll-free telephone assistance is available to callers on all workers' compensation topics of interest to the public, including how to report or file a claim, dispute resolution, benefit information, rights and procedures and other related issues. This branch also responds to constituent services requests from lawmakers and attorneys.

The primary daily activity of the workers' compensation specialists is to assist in the prompt delivery of benefits. This is done by facilitating communication and exchange of information between the injured worker and claims adjusters, employers and medical providers. Care is taken to remain impartial in dealings with all parties.



When a complaint is received that benefits are unreasonably denied or delayed, the Department's legal staff may initiate an inquiry as to whether an unfair claims settlement practice violation has occurred. The Commissioner is authorized to fine an insurance carrier for such violations in the delivery of benefits. Due to new procedures, most unfair claims complaints originate in the Office of General Counsel.

## **Drug-Free Workplace**

803 KAR 25:280 sets forth the requirements for employers to obtain a certification of a drug-free workplace. These requirements include alcohol and substance abuse education and awareness training for employees and supervisors. All employees shall receive written material explaining the employer's policies and procedures with respect to the drug-free workplace program. All records of drug and alcohol test results written or otherwise received by the employer shall be confidential and shall not be disclosed by the employer.

This voluntary program allows employers to submit applications for certification to the Department of Workers' Claims. If the application is approved, the employer may be eligible for a 5% discount on their workers' compensation insurance premiums.

Currently, the Department of Workers' Claims has received 130 applications of which 72 were certified and seven were renewed.

In June 2009, Hardin County became the first county in the State of Kentucky to apply and become certified as a drug-free workplace. This certification resulted in Hardin County receiving a check in the amount of \$23,645.00, which represented a 5% discount of their workers' compensation premium.

## **Medical Services Branch**

Cost containment and the administration of medically related services are the primary activities of this section of the Department of Workers' Claims. Responsibilities in this division this fiscal year included Managed Care, Utilization Review, and Medical Bill Audit plans, University Evaluations, "B" Reader Consensus Panel, Medical Fee Schedules, and Cost Containment. 803 KAR 25:091 Workers' Compensation Hospital Fee Schedule was revised and effective on June 5, 2009. Plans are underway for the development of the 2010 edition of the Kentucky Workers' Compensation Medical Fee Schedule for Physicians.

## **Managed Care Section**

The Managed Care Section is responsible for approving and overseeing the operations of Managed Care Programs (MCPs) in Kentucky. During fiscal year 2008-2009, there were 40 approved managed care programs in operation.

Managed Care regulates costs by utilizing gatekeeper and specialist physicians, pre-certification of services, aggressive case management and coordination of medical treatment and managed care programs in Kentucky. Assistance was offered to over 644 inquiries regarding managed health care plans during this time period.

Approximately 43% of Kentucky's workforce (excluding agriculture) participated in workers' compensation MCPs this year. The 40 MCPs that were operational covered approximately 4,248 employers and 812,226 employees.



## Utilization Review/Medical Bill Audit

Utilization Review/Medical Bill Audit is governed by 803 KAR 25:190 and is a review of the medical necessity and appropriateness of medical treatment and services. It was implemented as a cost-containment measure and for managing quality assurances in the delivery of medical services to injured workers.

Workers' compensation claims are automatically selected for utilization review when they meet the following criteria:

- Upon a medical provider's request for pre-authorization
- Upon notification of a surgical procedure
- When total medical costs exceed \$3,000
- When total lost work days exceed 30
- An Arbitrator or Administrative Law Judge orders a review

## University Evaluations

During the 2008-2009 fiscal year, there were a total of 246 claims that were referred for university evaluations. Of those, 177 were scheduled at the University of Kentucky and 69 at the University of Louisville. Timely scheduling of university evaluations by the universities and preparing and sending reports are elements that are critical to the success of the program.

As mandated by KRS 342.315, the Department of Workers' Claims has contracted with the University of Kentucky and the University of Louisville medical schools to perform evaluations of employees with workers' compensation claims.

Occupational disease and hearing loss claims are referred for evaluations upon the filing of a claim for benefits. In injury claims, the Administrative Law Judge may order evaluations or they may be requested by the plaintiff or defendant and then referred by the Administrative Law Judge.

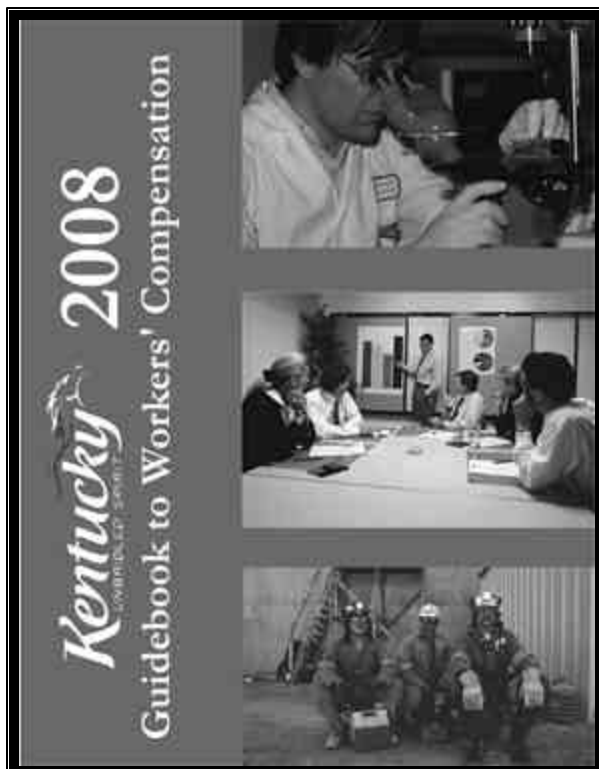
### Examinations scheduled from 7/1/2008 - 6/30/2009:

	<u>University of Kentucky</u>	<u>University of Louisville</u>	<u>TOTAL</u>
<b>Injury Claims</b>	<b>40</b>	<b>27</b>	<b>67</b>
<b>Hearing Loss Claims</b>	<b>104</b>	<b>26</b>	<b>130</b>
<b>Pulmonary Claims</b>	<b>33</b>	<b>16</b>	<b>49</b>
<b>Total</b>	<b>177</b>	<b>69</b>	<b>246</b>

## Publications

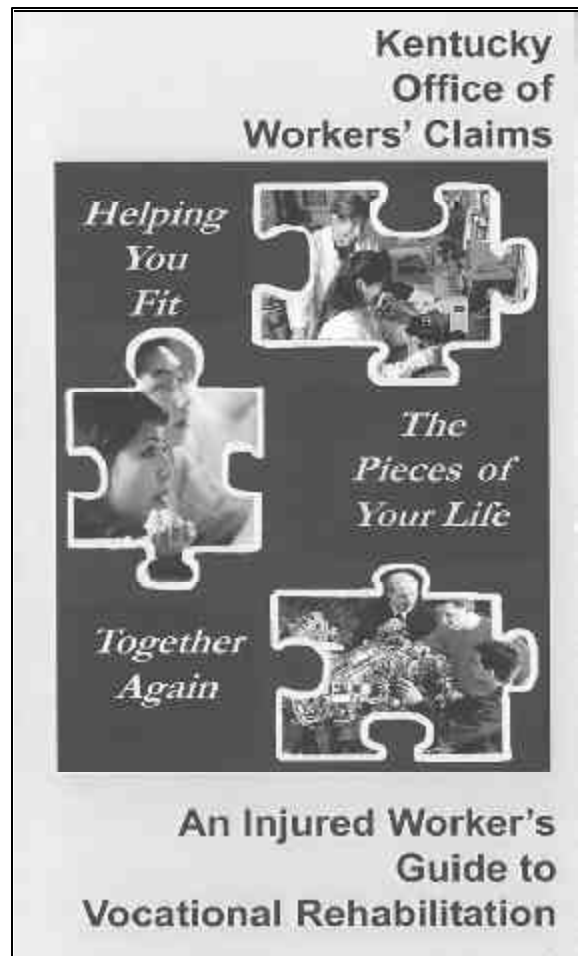


**Coal Workers' Pneumoconiosis  
Poster**



**Workers' Compensation Guidebook**

These publications may be accessed through the agency Web site at <http://www.labor.ky.gov/workersclaims> or by calling the Department of Workers' Claims at 800-554-8601.

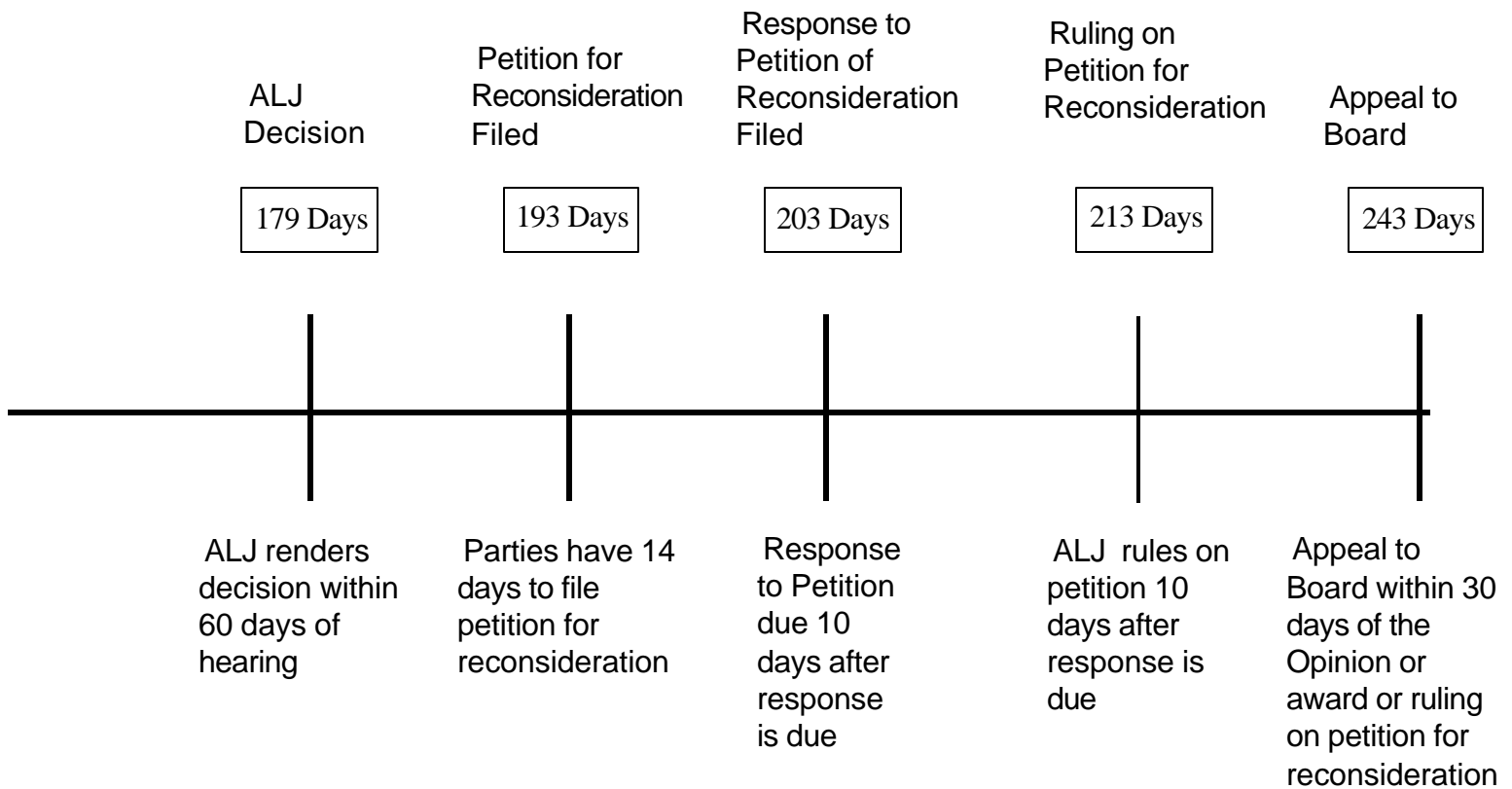


**Vocational Rehabilitation Brochure**

## SCHEDULE OF WEEKLY WORKERS' COMPENSATION BENEFITS

TYPE OF DISABILITY SECTION OF STATUTE	FOR INJURIES OCCURRING					
	01-01-05 thru 12-31-05	01-01-06 thru 12-31-06	01-01-07 thru 12-31-07	01-01-08 thru 12-31-08	01-01-09 thru 12-31-09	01-01-10 thru 12-31-10
<b>LUMP SUM DEATH BENEFIT</b>						
<b>INCREASE KRS 342.750(6)</b>						
\$69,916.52	\$59,645.97	\$62,002.42	\$63,500.37	\$65,813.60	\$68,198.54	
<b>TEMPORARY AND PERMANENT</b>						
<b>TOTAL KRS 342.730(1)(a)</b>						
66 2/3% of average weekly wage of employee-subject to the following:						
<b>MAXIMUM</b>	\$607.23	\$631.22	\$646.47	\$670.02	\$694.30	\$711.79
<b>MINIMUM</b>	121.45	126.24	129.29	134.00	138.86	142.36
<b>RETRAINING INCENTIVE BENEFITS</b>						
<b>KRS 342.732(1)(a)</b> 66 2/3% of average weekly wage of employee-subject to the following:						
<b>MAXIMUM</b>	\$455.42	\$473.42	\$484.85	\$502.51	\$520.72	\$533.84
<b>MINIMUM</b>	NONE	NONE	NONE	NONE	NONE	NONE
<b>PERMANENT PARTIAL</b>						
<b>FOR INJURIES OCCURRING</b>						
<b>AFTER 12-11-96</b>						
<b>KRS 342.730(1)(b), (1)(c)2,&amp;(1)(d)</b>						
99% of 66 2/3% of average weekly wage of employee subject to the following:						
<b>MAXIMUM</b>	\$455.42	\$473.42	\$484.85	\$502.51	\$520.72	\$533.84
<b>MINIMUM</b>	NONE	NONE	NONE	NONE	NONE	NONE
<b>PERMANENT PARTIAL</b>						
<b>FOR INJURIES OCCURRING</b>						
<b>AFTER 12-11-96</b>						
<b>KRS 342.730(1)(c)1,&amp; (1)(d)</b>						
When the employee does not retain physical capacity to return to type of work performed at time of injury- 99% of 66 2/3% of average weekly wage of employee subject to the following:						
<b>MAXIMUM</b>	\$607.23	\$631.22	\$646.47	\$670.02	\$694.30	\$711.79
<b>MINIMUM</b>	NONE	NONE	NONE	NONE	NONE	NONE

# Compensation Timeline



No individual in the United States shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, be excluded from participation in, or denied benefits of, or be subjected to discrimination under any program or activity under the jurisdiction of the Kentucky Labor Cabinet.

This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.

